XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(23) (24)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR
Cr. A. No. 1275/1994

APPELLANT Bifan Ram son of Deena Ram, aged about 30 years, R/o. Rajoti, P.S. Sitapur, District Sarguja (C.G.)

Versus

RESPONDENT The State of Chhattisgarh, through Police Station Sitapur, Distt. Sarguja (C.G.)

D.B. : Hon'ble Shri L.C. Bhadoo and
Hon'ble Shri Dhirendra Mishra, JJ.

6-7-2007

Shri Abhay Tiwari, counsel for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor, for the State/ respondent.

Heard on I.A. No. 1, for early hearing.

Counsel for the appellant submits that the accused is in detention since 6-9-1993, thereby he is in detention for 14 years and therefore, the appeal itself may be heard finally, to which Shri U.N.S. Deo has no objection.

Therefore, the appeal is heard finally.

ORAL JUDGMENT

Per L.C. Bhadoo, J. :

The accused appellant has preferred this appeal against the judgment of conviction and order of sentence dated 20-9-1994 passed by the 2nd Addl. Sessions Judge, Sarguja, in S.T.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

~~26~~ 25

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

No. 458/1993, whereby the learned Addl. Sessions Judge, after holding the accused appellant guilty for commission of offence under Section 302 of I.P.C., sentenced him to undergo imprisonment for life.

Case of the prosecution, in brief, is that accused appellant namely Bifan Ram is son-in-law of deceased Madhuva. The accused used to reside with his in-law's family. In the night on 3-9-1993, some quarrel took place between accused Bifan Ram and deceased Madhuva, and in the quarrel, accused Bifan Ram attacked Madhuva with a lathi on his head once only. Hearing cries of the wife of Madhuva, persons reached on the spot. The matter was reported to police Station, Sitapur under Ex. P-1 by Bahaldas. Station House Officer, Police Station, Sitapur registered the crime under Section 302 of I.P.C. Merg intimation Ex. P-2 was also given by Bahaldas. After registering the case, I.O. left for the scene of occurrence, after giving notice to the Panchas, prepared inquest Ex. P-5 over the body of Madhuva. Site plan Ex. P-6 was prepared. Body was sent for post mortem examination to the Primary Health Centre, Sitapur where Dr. K.K. Datta (P.W. No. 6) conducted post mortem and prepared report Ex. P-9 in which he opined that the cause of death was coma as a result of brain haemorrhage and death was

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

27 26

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

homicidal in nature. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class who in turn committed the case to the Session Judge, Sarguja from where learned Additional Sessions Judge received the case on transfer for trial.

Prosecution in order to establish the charge against the accused appellant examined 11 witnesses. Statement of accused was recorded under Section 313 of Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and he has been falsely implicated in the crime in question.

Learned Additional Sessions Judge after hearing the counsel for the respective parties, convicted and sentenced the accused as aforementioned.

We have heard Shri Abhay Tiwari, Advocate on behalf of the appellant and Shri U.N.S. Deo, Addl. Public Prosecutor on behalf of the State.

Shri Tiwari has not disputed the homicidal death of Madhuva. Moreover Dr. K.K. Datta (P.W.6), who conducted the post mortem has stated that on 5-9-1993, he conducted post mortem on the body of Madhuva. There was contusion injury in size of 11 cm x 3 cm on the left side of face, on dissection, it was found that maxilla and zygomatic arch bone

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

28 27

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

was fractured, left temporal bone was fractured, clotted blood was present on temporal reason of bone. Injuries No. 1, 2 and 3 were dangerous to life and the death was homicidal in nature. Therefore, in view of the above, it is established that death of Madhuva was homicidal in nature.

Shri Abhay Tiwari argued that the accused appellant was residing in his in-laws' house and on the fateful day i.e. 3-9-1993 when the accused and the deceased were in the house, all of a sudden some quarrel started and the accused picked up a lathi and assaulted once on the face of the deceased, as a result of which he sustained injury and died. Therefore, he submits that offence against the accused does not travel beyond Section 304-II of I.P.C.

On the other hand, Shri U.N.S. Deo supported the impugned judgment.

We have perused the evidence available on record. P.W. 1 Bahal Das has stated that in the night at 8.00 p.m. he heard cries near the house of Madhuva. Wife of Madhuva was crying that her son-in-law Bifan Ram has attacked her husband. He went to the place of occurrence and saw that Madhuva was lying on the ground. There was swelling in his head and face. Blood was oozed out from the injury. When he went to Madhuva, he was alive. On the next day, Madhuva

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

28

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

died, therefore, he lodged F.I.R. Ex. P-1. P.W. 4 Mahaveer has stated that on hearing the cries, he went to the house of Madhuva where he was lying on the ground. His wife said that the accused has attacked him. There was bleeding from the nose. On enquiry from Madhuva, he said that accused Bifan Ram has attacked him with lathi.

P.W. 2 Dhansai has also corroborated the above evidence and stated that he was in his house. Jhumabai, wife of Madhuva was crying that her son-in-law Bifan Ram has attacked her husband, on which he and Choukidar Bahal went to the place of occurrence and saw Madhuva in injured condition, there was swelling on his head and cheek. He was talking. On enquiry, Madhuva disclosed that his son-in-law Bifan Ram has attacked him. Therefore, the evidence of above three witnesses discloses that the deceased made oral dying declaration before them. On cross-examination of these witnesses, the defence has not been able to elicit any circumstance which discredits the evidence of these witnesses. Therefore, involvement of the accused-appellant in the crime in question is established.

So far as the nature of crime committed by the accused appellant is concerned, it is admitted position that the accused was residing in his in-laws' house. As per

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

prosecution, some quarrel started between the accused and the deceased and the accused attacked the deceased once only, therefore, in the above facts and circumstances, it cannot be said that the accused attacked the deceased with intention to cause his death, however the manner in which the accused attacked on the vital organ of the body of deceased Madhuva with lathi, it can safely be inferred that accused Bifan Ram had definite knowledge that by attacking the deceased with lathi on head, he may likely to cause death of Madhuva. Therefore, offence against the accused appellant does not travel beyond Section 304-II of I.P.C.

In the result, the appeal partly succeeds. Conviction of the appellant under Section 302 of I.P.C. and sentence imposed upon him under that section are set aside. Instead thereof, he is convicted for offence under Section 304-II of I.P.C. and sentenced to undergo 10 years R.I. It is stated that the accused is in detention since 6-9-1993, thereby he has already undergone the sentence. As such, he be set at liberty forthwith if not required in any other case.

Sd/-
L.C. BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge